

LAW ENFORCEMENT OFFICIALS' USE OF FORCE: CHOICE OF MEANS AND LEGAL CERTAINTY

Ülle Vanaisak

*Leading lecturer at the Police and Border Guard College, PhD student from University of Tartu,
Estonian Academy of Security Sciences
Kase 61, 12012 Tallinn, Estonia
Phone: +372 526 9085
Email: Ylle.Vanaisak@sisekaitse.ee*

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Annotation. The research analyses law enforcement officials' (namely, police, rescue service, environmental protection, and local authorities)¹ use of supervision measures and direct coercion and how this concept manifests in legal acts. The main focus is two-fold: the right and ability of the official to choose the proper means of direct coercion and the legal certainty regarding its use, especially when used in self-defence. The legal analysis adopts a comparative approach and the analysis is further supplemented by expert surveys.

Keywords: public order, competent law enforcement agency, direct coercion, use of force, special equipment, self-defence, professional assistance, Estonia.

INTRODUCTION

During the writing of this article, the government of the republic has declared a state of emergency in Estonia and temporarily reintroduced border control and the guarding of the state border. In such an atmosphere the providing of vital services receive extra attention, and therefore it is of utmost relevance to deal with the competence of different law enforcement institutions to provide public order, their authorisation to apply the measures of state supervision and direct coercion to defend themselves², provided it may not always be possible for the police to render (professional)³ assistance to other institutions due to fulfilling their own duties. According to the Law Enforcement Act (LEA) the police may apply direct coercion.⁴ Other law enforcement institutions may apply it only in the cases stated in law. Direct coercion

¹ The article provides an overview of the following law enforcement officers: police, rescue official (destroyer of explosive ordnance), environmental inspector, local authority official.

² In Law enforcement law there is a principle that a person's constitutional rights can only be encroached upon following the principle of *ultima ratio*, meaning all other measures have reached their limits.

³ According to § 6 subsection 6 of the LEA, police renders professional assistance if it has to do with the application of direct coercion.

⁴ According to the Law Enforcement Act valid in Estonia, physical force, a special equipment or a weapon (direct coercion) may only be used by the police. The special that are allowed are handcuffs, shackles, binding means, a service animal, a technical barrier, a means to force a vehicle to stop, a water cannon etc. Police service weapons are firearm, gas and pneumatic weapons, a cut-and-thrust weapon and an electric shock weapon.

is predominantly applied in cases asking for quick intervention in which penalty payment and substitutive enforcement are insufficient to achieve the desired aim. By its nature, the application of direct coercion is an administrative act that is preceded by an order to counter threat, which means it is an administrative act. A warning must be given before direct coercion is applied.

Legislators will to provide institutions a right to apply direct coercion has been contradictory. On one hand, it was found that only as few law enforcement institutions (hereinafter LEIs) as possible should have the right to apply force that is monopolised by the state. On the other hand, it was explained that if a LEI has a right to apply such means of state supervision which also stipulates the application of direct coercion, then this LEI should also have a right to apply direct coercion.⁵⁶ The LEA came into force in 2014 in Estonia, but its compatibility with sectoral special acts of law has not been studied much. The LEA is a general law regulating the protection of public order, therefore, according to the principle of legal clarity, the requirements of the law-enforcement law must be reflected in sectoral special and primary acts of law. The principle of legal clarity means that legal provisions should be written clearly enough the person reading them could understand which legal consequence follows certain activity or inactivity.⁷ Legal certainty means legal norms related clarity⁸, also for the one applying the norm. The article studies three law enforcement institutions - city and local government councils (LGC), Environmental Inspectorate (EI) and Rescue Board (RB). Those institutions have been chosen since the laws are contradictory when the content of their duty to provide public order, the applied measures and their right to apply direct coercion are concerned. The LGC has a right to conduct state supervision and apply measures according to 20 different acts of law, but it has no right to apply direct coercion⁹, the EI inspectors have the supervision competence according to 26 acts of law, but there are significant contradictories concerning the allowed means of direct coercion. Finally, the tasks of explosive ordnance

⁵ Government of the Republic. 2007. In the explanatory notes to the draft legislation of the Law Enforcement Act. Pp 105. [Online material] Available at: <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/8a9c2286-06fc-65d2-957b-bd9e11a940c4/Korakaitseadus> [Accessed on 05.05.2020].

⁶ For example, in § 44 subsection 6 it is stated that in the event of enforcing the prohibition on stay, one may apply direct coercion.

⁷ Editorial Board: Madise, Ü., Kalmo, H., Mäkssoo, R., Narits, R., Pruks, P., Raidla, J., Vinkel, P. 2017. Commented version of the Constitution of the Republic of Estonia. Pp 105 [Online material] Available at: <https://www.pohiseadus.ee/> [Accessed on 05.05.2020].

⁸ *Ibid*, pp 153.

⁹ For example, according to §§ 55-56 of the LEA, LGC and the police have similar right to conduct supervision of the complying with the general requirements for behaviour in public place, but the police have a right to apply more measures and they can also exercise direct coercion.

disposal (EOD) technicians have been stated in a decree, not in an act of law, and from amongst the means of direct coercion, they have a right to use physical force and a firearm.

The application of direct coercion encroaches upon people's constitutional freedoms, but its excessive use degrades human dignity. Both theoretical and practical training are needed to guarantee purposeful application of direct coercion. The police curricula have such training in the volume of ca 270 academic hours (ca 10 ECTS).

The need to apply direct coercion may also arise in the event of performing self-defence. While fulfilling their duties, law enforcement officials may find themselves in a situation in which they are attacked. At the moment, there are no regulations that would deal with the justified application of direct coercion in the event of performing self-defence.

DATA AND METHODOLOGICAL APPROACH

The **research** topic deals with the city and local governments' public order officials', Rescue Board's EOD technicians' and the Environmental Inspectorate's inspectors' competence to conduct state supervision, incl. their right to apply direct coercion. The **aim** is to give an overview of the need and possibility to increase the rights of the law enforcement officials conducting state supervision.

In order to reach the aim, the following research questions were posed:

1. According to the acts of law, which possibilities do the LGC, EI and RB have to apply the measures of state supervision and use the means of direct coercion, and what is their real need for it?
2. Is it possible to use the means of direct coercion allowed in state supervision while performing self-defence?
3. Are the valid curricula sufficient for the EI inspectors to acquire the necessary knowledge and skills needed for the legal application of direct coercion?

Research tasks: 1. To provide an overview of the acts of law regulating the state supervision competence of the LGCs, RB and EI, incl. their right to apply direct coercion. 2. To give an overview of the bases of the application of direct coercion and its means, and to find out the LEIs' need to have a right to apply additional means, incl. to use means of direct coercion while performing self-defence. 3. To find out whether the current curricula have direct coercion related training in a sufficient volume to provide the LEIs with the competence necessary for their work. 4. To develop recommendations to amend acts of law and curricula.

The article is compiled using a combined research **methodology**. Legal provisions are

used to give a systematic overview of the current situation and of the needs for change (descriptive research¹⁰), and recommendations are given to amend laws. Documents' review helps to give an overview of the standards of the Estonian Qualification Authority¹¹, the LEI curricula implemented at the Estonian Academy of Security Sciences; recommendations are given to make amendments. Experts of the areas are interviewed. The sources used refer to Estonian acts of law, explanatory notes to the drafts of law, constitution, commented versions of the Law Enforcement Act and the Penal Code, decisions of the Supreme Court and relevant scientific papers.

LAW ENFORCEMENT AGENCIES' RIGHT TO APPLY DIRECT COERCION

Fundamentals for the application of direct coercion

The Law Enforcement Act (hereinafter LEA) states the general rules for applying direct coercion, the specific laws define the peculiarities of different law enforcement agencies and the means of direct coercion allowed for them, however, the bases for applying direct coercion cannot be extended with specific laws since these can only specify and constrain¹².

After the Law Enforcement Act was enforced in 2014, there was a clear system of administrative coercive measures – now there was a regulatory framework for applying direct coercion in addition to penalty payment and substitutive enforcement. The application of direct coercion is justified mostly in urgent threat situations where guaranteeing the fulfilling of an obligation to ascertain and counter a threat or to eliminate a disturbance with administrative coercive measures is impossible or not possible at the right time.¹³ This is an administrative measure which aims to counter disturbances, prevent their harmful consequences and guarantee the taking of an offender in to custody.¹⁴ Direct coercion is applied only to enforce the obligation directly connected with a person – a person is forced to do something, no one is acting instead of them. In the case of obligations not related to persons, penalty payment or substitutive enforcement is used¹⁵.

¹⁰ Lagerspetz, M. 2017. Ühiskonna uurimise meetodid. Sissejuhatus ja väljajuhatus. Tallinn: Tallinn University Press, pp 87.

¹¹ Estonian Qualifications Authority, 2018. Occupational qualification standards. Available at: <https://www.kutsekoda.ee/et/kutseregister/kutsestandardid/otsing> [Accessed on 11.05.2020].

¹² Explanatory notes of the LEA 49, pp 107.

¹³ Explanatory notes to LEA 49, pp. 102, LEA § 76 subsection 1.

¹⁴ Koolmeister, I., Orion, K. 1998. Haldussund kehtivas õiguses. Juridica, VIII, pp. 382

¹⁵ Laaring, M. 2010. Direct Coercion as an Administrative Coercive Measure in the Police and Border Guard Act and the Public Order Defence Act Bill. Juridica, VIII, pp. 552, 554.

The application of direct coercion has to be:

- Appropriate and in accordance with the aim / suitable for achieving the aim.
- Unavoidable, requires the smallest possible involvement.
- Proportionate towards the aim, not more burdensome than the legal right being protected.

The means of administrative coercion can be used multiple times, they can be changed if needed and they are used until the desired aim has been reached. Before applying the coercion (except for in urgent matters) the parties involved need to be issued a precept (delivered an administrative act) to fulfil the obligation, a deadline for fulfilling the obligation must be stated, also the other party must be warned for the coercive measure to be used. Enforcement is allowed when the period for challenging the administrative act has passed or it has been issued for immediate execution and the person has not fulfilled their obligation yet¹⁶.

Direct coercion is applied by the police, other law enforcement agencies are allowed to do so only in the cases stated in specific acts of law.¹⁷ Initially it was desired to allow only a few law enforcement agencies to apply direct coercion to avoid the possible uncontrollable wilfulness of public authority. Another explanation for that was the lack of special skills, means and weapons related training.¹⁸ However – if a law enforcement agency has a competency to conduct state supervision and an authorisation to apply the measures stated in the LEA, then they also have a right to apply direct coercion to enforce the measures.¹⁹ The LEA provides 22 special measures for the exercising of which one may apply direct coercion until it is unavoidable to achieve the aim.²⁰ There is also an opportunity to apply direct coercion to enforce a general measure – a precept.²¹ Direct coercion cannot be applied to obtain statements, opinions or explanations²², since it is interpreted as torture.²³

Means of direct coercion are divided into physical force, special means and weapons²⁴. The levels of direct coercion are defined from the most lenient towards harsher dependent on

¹⁶ LEA § 74-78, Laaring, M., Pars, S., Kranich, H., Nuka, E. Kiviste, J., Mikiver, M., Roosve, T., Vanaisak, Ü. 2017. *Korralaitseadus. Kommenteeritud väljaanne*. Tallinn: Estonian Academy of Security Sciences, pp. 301.

¹⁷ LEA § 75 subsection 1.

¹⁸ Explanatory notes to LEA 49, pp. 105.

¹⁹ *Ibid.*

²⁰ LEA 2019.

²¹ LEA § 28 subsection 3.

²² LEA § 76 subsection 3.

²³ Oestmann, P. 2012. Lawful and Unlawful Torture in ius commune Criminal Procedure. *Juridica*, I, pp. 52-62.

²⁴ LEA § 74.

the presumable seriousness of the applicable measure, the regulations have been developed as a system with internal steps, whereas in the case of the most serious means, the bases for applying coercion are significantly narrower.²⁵ There are three procedural steps related to direct coercion (the steps can be avoided only due to the urgent need to counter an immediate serious threat or eliminate a disturbance²⁶ first a valid administrative act must be issued to the addressee to obligate them to counter an immediate threat or eliminate a disturbance, then the person is warned and informed of the circumstances of not fulfilling the administrative act and of which means of direct coercion is going to be applied, the third step is the act of applying coercion²⁷, which means the application of force is first expressed with orders and prohibitions that in the final step are guaranteed with the application of direct coercion.²⁸

Physical force is applied in order to physically influence a person, animal or object²⁹, whereas force is directly carried from the applier of which to the object of direct coercion. For example, holding, pushing, taking a person away, blocking an animal attack, knocking down doors and hand-to-hand fighting techniques. Special means are mainly used to increase or direct the influence of physical force. Special means are directly listed in the act of law, but there are countless things that could be used as special means, for example, a service car or tools used to open doors. It is impossible to list all means specifically, however, the type of the means can be determined according to their aim.³⁰ According to Weapons Act § 3 subsection 1 clause 1, subsection 2, weapons of officials or service weapons are prescribed by law to government authorities exercising public authority for the performance of their duties.³¹ Service weapons are divided into firearms, gas, cut-and-thrust, pneumatic and electric shock weapons.³² The means of direct coercion can be applied together, they can be changed if needed, but one always has to make sure the application of force is not excessive.³³

²⁵ Laaring 2010, pp. 552.

²⁶ LEA § 76 subsection 2.

²⁷ Laaring 2010, pp. 552.

²⁸ Jäätma, J. 2015. Ohutõrjeõigus politsei- ja korrakaitseõiguses: kooskõla põhiseadusega. Doctoral dissertation. University of Tartu Press. Pp. 163.

²⁹ LEA, 2019.

³⁰ Explanatory notes to LEA 49, pp. 103.

³¹ *Weapons Act* (2001), RT I, 13.03.2019, 142.

³² Minister of the Interior, 2018. The types of service weapons and their ammunition and munition and the procedure for the handling of and for handing over service weapons, their ammunition and munition and components of firearms. Regulation RT I, 12.09.2018, 6, § 2.

³³ Kuurberg, M. 2016. Estonia Marks 20 years as Party to the Convention on Human Rights. *Juridica*, VII, pp. 528.

Supreme Court emphasises that the application of a special measure is reasonable only when the more lenient measures have become exhausted or such measures are not suitable due to the peculiarity of the given situation. In the event of the existence of bases to apply a special measure, the officials have to avoid harming people's health, causing pain and degrading them in an extent that is greater than absolutely necessary in the given moment.³⁴

First the public order official can intervene by just being present and communicating with people. This does not influence the people's freedoms intensively, but has a preventive influence on the person liable for public order. The application of physical force undermines a person's dignity intensively, it causes pain and bodily injuries. Performing kicks or suffocation techniques can cause fatal injuries or death. If handcuffs are applied too tight or a gas weapon is used, pain is caused, but they rarely cause bodily injuries. Cut and thrust weapons (telescopic baton) can cause pain if kicks are made to muscles. Kicks to the heart, spine and head are forbidden since these can cause fatal injuries or death.

Kiviste has compiled a learning material concerning the influence of the means of direct coercion (see Figure 1).

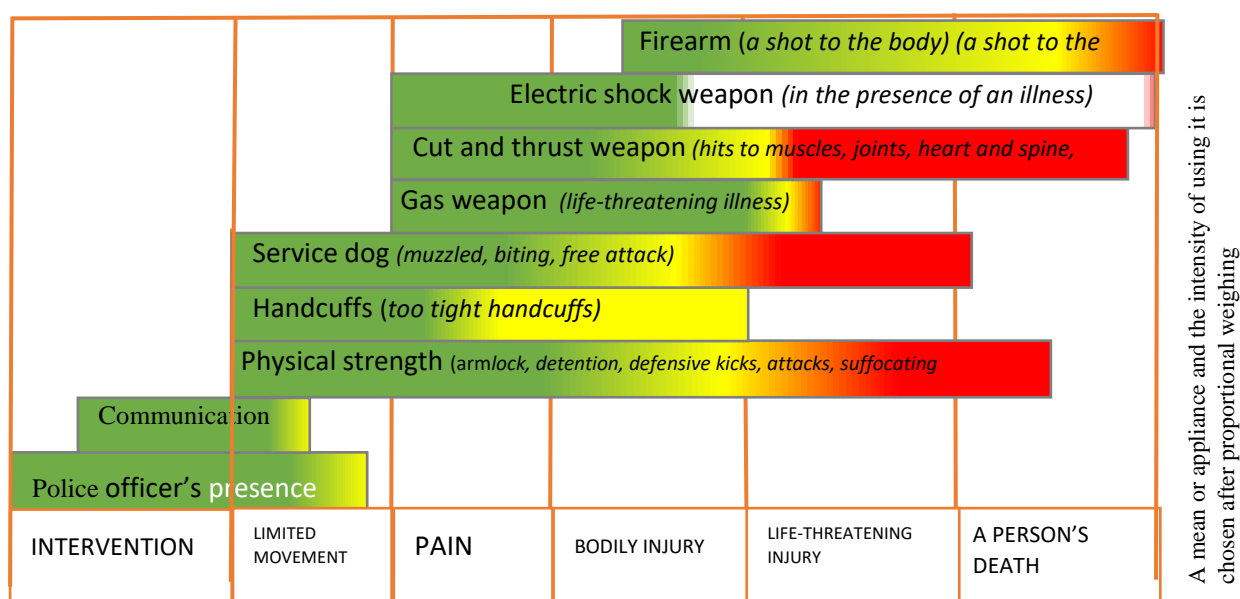


Figure 1. The choosing of means for direct coercion and the application of it (Laaring, et al., 2017, pp. 284; compiled by Jaak Kiviste)³⁵

³⁴ Administrative matter of Taivo Ild and Lea Nõmme (2008) 3-3-1-65-07, pp. 20.

³⁵ Laaring, et al., 2017, pp. 284; compiled by Jaak Kiviste.

A person who finds a public order official has violated their rights or restricted their freedoms, can challenge the activities of the public order official. The challenge is reviewed by the city or rural municipality council. Upon the dismissal of a challenge or if the person finds that their rights have also been violated upon conducting the challenge proceedings, it is possible to file an appeal to the court to protect their rights. In addition to that, it is possible to bring disciplinary proceedings against a public order official for the wrongful breach of their official duties. For unlawful use of violence, it is possible to punish a public order official for the abuse of authority pursuant to criminal procedure³⁶.

Legal basis to conduct state supervision

Law enforcement agency is an institution, body or person, who according to a law or regulation has been assigned to conduct state supervision. In Estonia, competent law enforcement agencies are the ministries, agencies/boards and inspections, but also those city and rural municipality governments where there has been established a respective public order official or a unit. According to the Law Enforcement Act, state supervision is an activity of a law enforcement agency which aim is to prevent a threat, ascertain and counter a threat or to eliminate a disturbance.³⁷

Law enforcement agencies can ascertain and counter a threat or eliminate a disturbance only when they are active and apply respective measures. The measures of state supervision are, like any other activity in administrative procedure, dividable to issue state supervision related administrative acts.³⁸ Those administrative acts are meant for achieving a certain legal outcome, and for acts which aim is not to create rights or obligations, but to create factual consequences (e.g. notifying or the application of direct coercion).³⁹ Jurisdictional rules stated in special laws define the supervisory tasks of law enforcement institutions⁴⁰; at the same time, they are authorised to apply general and special measures of state supervision. There are all together 25 measures defined in the LEA, two of which are general measures and 23 special measures.⁴¹ Special measures are divided into those related with the processing of personal

³⁶ Penal Code (2001) RT, 29.06.2018, 4, § 291.

³⁷ Laaring *et al.*, 2017, pp. 13.

³⁸ Laaring *et al.*, 2017, pp. 16.

³⁹ Explanatory notes to draft legislation 49 SE, pp. 46, ref Laaring *et al.*, 2017, pp. 76.

⁴⁰ Laaring, M. 2015. Eesti korrakaitseõigus ohuennetusõigusena, pp 77-78. Doctoral dissertation. University of Tartu Press.

⁴¹ Special laws may state additional measures, e.g. test transaction according to § 52¹ of the Alcohol Act, or removal from driving license according to § 91 of the Traffic Act.

data, those applicable with regard to person suspected of state of intoxication and other measures. Those measures relate to the measures considered as more serious encroachments of people's constitutional rights, e.g. the prohibition on stay, stopping of vehicle, security check, examination of person, entry into premises, taking into storage of movable, etc. Special measures have been listed according to the extent of the encroach upon the basic rights, starting from the least serious and moving towards the more serious ones. Both the prohibition on stay and the detention of a person are both restrictions on the freedom of movement, but the first is temporary and less intrusive measure and therefore it has been listed before detention.⁴²

It must be emphasised that direct coercion is not a measure of state supervision, but instead a means to force a person to comply with the measure. If an EI official has been entitled to exercise direct coercion, then the special law shall list the exact means the EI officials may use.

Environmental Inspectorate's inspector's competence to conduct state supervision proceedings

Environmental Inspectorate is an administrative unit under the Ministry of Environment which main task is to conduct state supervision and apply state's coercive measures on the basis and to the extent specified by law. An EI inspector may have a necessity to exercise direct coercion upon conducting state supervision according to 26 special laws. EI inspectors may apply measures with different intensity, starting from questioning and requiring of documents to the examination of premises and the detention of a person. The need to apply means of direct coercion may also arise when performing self-defence if an inspector's life is in danger due to performing their professional duties. The problem lies in a fact that the acts of law allowing EI inspectors apply direct coercion are contradictory. For example, according to the so called EI stem law, the Environmental Supervision Act, inspectors are allowed to carry a service weapon and use a service dog and handcuffs upon protecting standing crop, game and fishery resources. At the same time, according to the Hunting Act, they are allowed to apply physical force but cannot use a service dog; however, according to the Nature Conservation Act and Waste Act they may only apply physical force. According to the Product Conformity Act and Liquid Fuel Act, application of direct coercion is not allowed at all. This situation causes unnecessary uncertainty upon performing official duties - in line with the principle of legal certainty, a regulation should give its implementer clear directions.

⁴² Laaring *et al.*, 2017, pp 135.

According to the currently valid acts of law, the means of direct coercion EI inspectors may use are physical force, handcuffs, service animal (dog) and a firearm. The results of the interviews carried out with the heads of the EI bureaus in different counties in 2019 revealed that the use of those means, apart from the service animal, is seen as necessary. They found it was important to amend the list of allowed means with the following: means of forcing a vehicle to stop, a cut -and-thrust and a gas weapon, binding means and an electric shock weapon (see Figure 2).

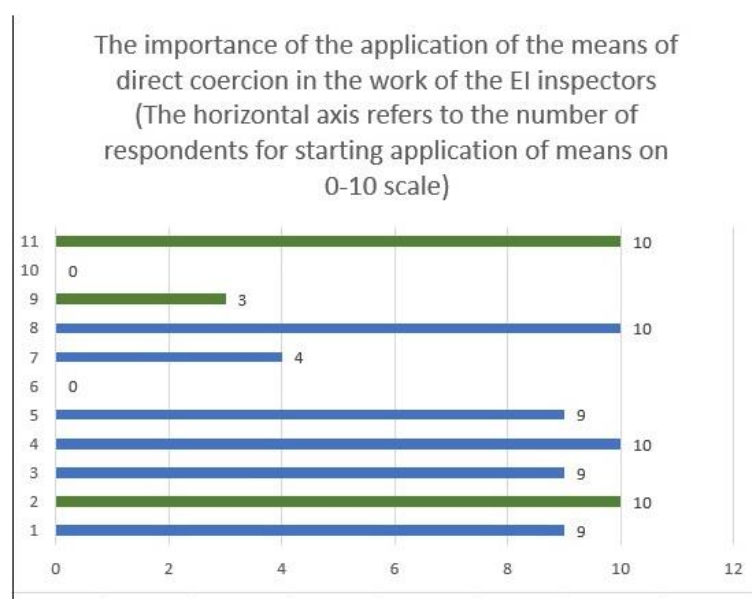


Figure 2. The importance of direct coercion according to the heads of different bureaus, the lower scale indicates the importance of the application of the means. 10 refers to “extremely important” and 0 to “not important at all” (compiled by the author).

The need to apply direct coercion is mostly seen in the areas of fishing, hunting and forestry where the damages are great, and the offenders do not obey and are aggressive towards the inspectors and try to escape. There has also been a need to apply direct coercion while entering premises or stopping a vehicle.⁴³

City and rural municipality public order official's competence to conduct state supervision proceedings

§ 53¹ subsections 1 and 2 of the Local Government Organisation Act state that a local government may form a law enforcement unit of a rural municipality or city, or appoint an

⁴³ Read more: Vanaisak, Ü., 2019. Inspectors Of The Environmental Inspectorate Confused With The Right To Apply Direct Coersion. Proceedings Estonian Academy of Security Sciences, 1: Security: From Corner To Corner, pp 199-235, Tallinn: Estonian Academy of Security Sciences.

official who engages in law enforcement. The main function of such body is to participate in ensuring public order and to exercise supervision over compliance with the rules adopted by the rural municipality or city council in the jurisdiction determined by the local government (Local Government Organisation Act, 1993). The problem lies in a fact that city and rural municipality public order officials have the competence to conduct state supervision according to 19⁴⁴ different acts of law, but upon comparing the tasks of other law enforcement agencies brought in the same acts of law, the list of special measures the LGCs can apply is insufficient for conducting their duties, also they do not have the right to exercise direct coercion to force persons to comply with a measure. For example, according to the Alcohol Act, Waste Act, Environmental Supervision Act, Law Enforcement Act and Nature Conservation Act the LGC has the right to apply measures similar to those applied by the inspection officials of the Environmental Inspection and the Tax and Customs Board and police officers, but unlike the LEIs, the LGCs cannot exercise direct coercion. In 2017 the Ministry of the Interior initiated a draft legislation to entitle LGC public order officials to more rights, e.g. the right to apply measures when dealing with persons suspected of state of intoxication and direct coercion if necessary. The draft legislation has not become a law yet. Giving the LGCs the right to use direct coercion in order to enforce measures is necessary since at the moment they cannot finish the task the state has assigned them. In order to exercise direct coercion, the LGC often calls the police who cannot come and help them since they have their own duties, and therefore the disturbance remains unsolved.⁴⁵

The Rescue Board's explosive ordnance disposal technician's competence to conduct state supervision proceedings

The Rescue Act (RA) is a primary law of the rescue sector which regulates the tasks of rescue institutions and also provides explanations for such important terms of the field as rescue work or rescue incident. According to the RA, a rescue official must conduct EOD activities during which it is allowed to apply the measures of state supervision and use the means of direct coercion. All employees of the EOD centre and bomb squads are rescue officials with the occupational qualification of an EOD technician level 4, 5 or 6.

Table 1. Professional tasks of an EOD technician compared to the key concepts brought in the Law Enforcement Act (compiled by the author)

⁴⁴ Read more: Ü. Vanaisak. 2018. City and rural municipality public order officials as bodies conducting state supervision proceedings – the needs and opportunities for increasing their rights, pp 27-71.

⁴⁵ LEA, 2019, § 6.

Rescue Act	Statute of the Rescue Board's EOD centre	Law Enforcement Act
Direct coercion is applied by a rescue official. (§ 24 ¹).		Law enforcement agency may use direct coercion (§ 75 subsection 1).
Rescue service agencies are the Rescue Board and the Emergency Response Centre (§ 4).		Authorised (special) law enforcement agency (§ 6 subsection 1).
Explosive ordnance disposal (§ 3 subsection 1 ²).	carrying out of EOD activities (section 2.1.4)	Law enforcement and state supervision (§ 2 subsection 1, 4).
?	compiles codes of conduct to be used in the event of risk of explosion and carries out prevention work (section 2.2.8)	Prevention of a threat (§ 5 subsection 7).
?	responds to bomb threats and findings which may result in a risk of explosion (section 2.2.3); carries out explosive detection activities to protect VIPs, during police operations and after explosions (section 2.2.5); uses bomb dogs when looking for explosives (section 2.2.4).	Determining a suspicion of a threat (§ 5 subsection 6).
?	identifies a source of risk and liquidates ammunition and explosives (section 2.2.2); guarantees responsiveness to a CBRN threat and attack (section 2.2.11).	Determining and/or countering of a serious threat (§ 5 subsection 4).
The Rescue Board may apply the general and special measures of state supervision stated in §§ 30, 32, 44, 49, 50, 51 of the LEA + duty to grant use of a thing needed for EOD, relocation of a car, restriction of radio communication and other necessary activities (§s 15; 13 ¹ subsection 1; 13 ² subsections 2, 3; 16; 20, 21).		List of general and special measures (§s 24-53).
Rescue official of the Rescue Board has a right to use the means of direct coercion (§s 24 ¹ -26).		Means of direct coercion (§s 74, 78 ¹ -81).

Explosive ordnance disposal is an activity related to countering a bomb threat, an ammunition threat and a threat of explosion. Grammatically and from the viewpoint of law-enforcement law it means the countering of serious danger. The most significant criteria of serious danger are a threat to a person's life, a threat to a proprietary benefit of great value, or a threat of the occurrence of a serious environmental damage. Therefore, a threat that really exists and has to be countered (e.g. a 100 kg bomb has been found on a plane, a criminal is wearing an explosive belt). However, the work of an EOD technician involves a lot more than what is stated in the RA, and all their tasks related to the providing of public order should be stated in the RA. Rescue officials of the EOD centre also deal with risk prevention and determining of the suspicion of threat (see Table 1).

For example, the determining of the suspicion of threat involves carrying out explosive

detection related activities for VIPs, using of bomb dogs when looking for explosives etc. At the moment, the (state supervision related) tasks of EOD technicians have been brought in the statute of the EOD centre. The more intensive the encroachment on persons' constitutional rights, the more precise must be the legal regulation for the content and extent of the intervention. A person must know that the public order official dealing with them is competent, and the official must feel confident they act according to the law and in the legal extent.

Based on the current RA, the means of direct coercion an EOD technician may use are physical force, special means and service weapons. The special means of a rescue official are an explosive device for special purposes which is not used against a person and a service dog that can be used at explosive ordnance disposal to detect explosive material and explosives, and while carrying out rescue work to find a person and determine a threat. The Rescue Board's service weapons are firearms.

On 19 December 2019, a draft legislation to amend the Rescue Act and the Weapons Act was initiated. According to the explanatory notes to the draft, the officials who have the occupational qualification of an EOD technician shall have a right to carry and use a firearm. The amendment is connected with the right to use a firearm while performing self-defence, not with the right to use means of direct coercion while enforcing the measures of state supervision. Therefore, should an EOD technician need to apply direct coercion to enforce the prohibition on stay while determining the explosives threat, then in the future the only legal means to be used is physical force.

In November 2019, the EOD commanders participated in a two-day training session held at the Estonian Academy of Security Sciences where they focused on the theoretical bases of public order related intervention and its practical implementation. After the training, the participants were asked to answer to a questionnaire in the LimeSurvey environment. The questionnaire was forwarded to 12 EOD commanders. 9 fully completed questionnaires were later received. The respondents' length of service in the area of EOD was 9-27 years, the average length of service was 16.5 years; therefore, the respondents had a great work experience and their answers had a practical value. The results of the survey revealed that the state supervision measures they are allowed to use are not sufficient for fulfilling the professional tasks of an EOD technician. Also, the list of the means of direct coercion needs amending.

First the respondents were provided with a list of the special measures stated in the Law Enforcement Act, and then they were asked to evaluate the importance of using them on a 5-

point scale, on which 5 means very important and 1 not important at all. All respondents marked it was the most important to have a right to apply the examination of premises and movables, and be allowed to enter into premises. Applying the taking into storage of movable, security check, prohibition on stay and the establishment of identity were seen almost as important (8 respondents out of 9). Seven respondents of nine stated it was important to stop a vehicle, question and require documents and establish identity by obtaining data from electronic communications undertaking. More than a half of the respondents (5 of 9) said it was also important to apply the detaining of a person. Establishment of identity by using monitoring equipment and by a special establishment measure were not marked as important. According to the current

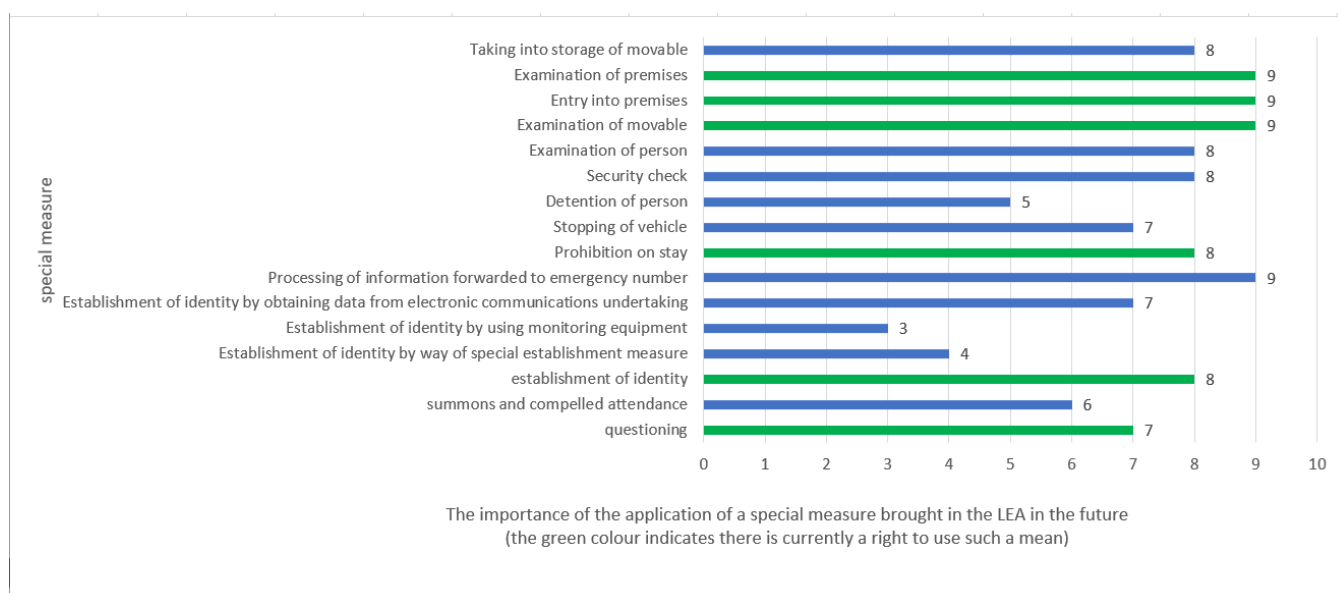


Figure 3. The importance of applying special measures in explosive ordnance disposal, based on the questionnaire carried out among EOD commanders (compiled by the author).

Rescue Act, EOD technicians have a right to question persons and require documents, establish identity, apply the prohibition on stay, enter into premises and examine movables and properties. EOD technicians should also have a right to carry out security check, examine persons and movables, take a movable into storage and detain a person (see Figure 3).

The respondents were asked to evaluate the need to use the means of direct coercion. The most important for the respondents was the right to use a gas weapon (8 respondents of 9), this was followed by the right to use binding means, technical barrier, a service animal, a firearm and physical force (6-7 respondents of 9). More than a half of the respondents brought out that EOD technicians should also have a right to force a vehicle to stop, use handcuffs and a pneumatic weapon. Using an electric shock weapon and a cut-and-thrust weapon has not been

brought out as important (4 and 2 respondents respectively). From amongst the means of direct coercion listed in the Law Enforcement Act, the EOD technicians can at the moment apply physical force, use a service animal and a firearm. According to the Rescue Act, they may also use an explosive device for special purposes that is not used against people (see Figure 4).

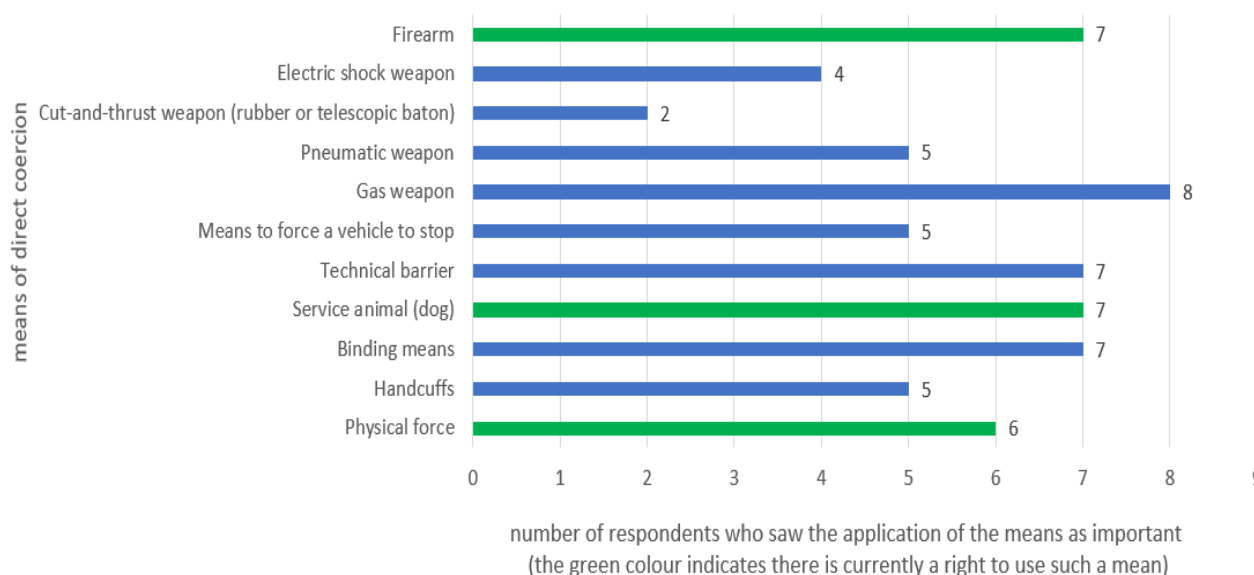


Figure 4. The importance of the means of direct coercion in explosive ordnance disposal (based on the questionnaire carried out among EOD commanders, compiled by the author).

RIGHT TO PERFORM SELF-DEFENCE AND THE USE OF THE MEANS OF DIRECT COERCION IN SELF-DEFENCE

During after work hours, a public order official can rely on criminal law related self-defence like a regular person.⁴⁶ Self-defence is divided into necessity (an act to avert a direct or immediate danger to the legal rights of the person or of another person) and act of necessity (the damaging of attacker's legal rights with the most lenient means in the defender's hands that has to meet the dangerousness of the attack)⁴⁷ and is in conformity with the theory of self-defence according to which the representative of the state powers, just like any other citizen, has a right to defend themselves in terms of self-defence.⁴⁸

⁴⁶ Sootak, J., Pikamäe, P., 2015. Karistusseadustik. Kommenteeritud väljaanne, pp 103-110. Kirjastus Juura.

⁴⁷ Soo, A., Sootak, J. 2014. Right of Self-Defence in the Case-Law of the Criminal Chamber in the Past Decade. *Juridica*, II, pp. 145.; Penal Code 2019, § 28.

⁴⁸ Sootak, J. 2007. Crisis Resolution in the Estonian Legal System, from a Penal Law Aspect. *Juridica*, II, pp. 85; also see Table 2.

Table 2. Self-defence in different theories (Soo & Tarros 2015, pp. 712; Teder 2014, pp. 8-9; Sootak 2007, pp. 85; Kühl 2002, lk 112-113; compiled by Vanaisak).

Theory	Content and explanation
Public theory	The self-defence defined in criminal law is a general rule and the special rule defined in the specific law shall be applied
Criminal law related theory	The rights of the representative of state powers to apply legitimate self-defence arise from criminal law and they cannot be narrowed down with specific laws
Personal protection theory	The representative of state powers, just like any other citizen, has a right to defend themselves in terms of self-defence
Theory of separation	The criminal law related justifications and the authorisations arising from specific laws fall under different law branches and therefore do not legally depend on each other

On 17 March 2014, Indrek Teder, the Chancellor of Justice, proposed to ministers to legalise the police official's self-defence regulation and to analyse what was related to the State Liability Act. The same should also apply for other law enforcement officials who might risk with their life and health when fulfilling their duties.⁴⁹ Public authorities also have the constitutional right to defend the state and to live.⁵⁰ The analysis also has a connection with the EI inspectors, public order officials and RB EOD technicians, who may, while carrying out their duties, face a situation in which they are attacked. In a situation where the attack is caused by the official's official activity, not a person. For example, upon detaining a person, the suppression of a person's resistance transforms into the blocking of an attack against an official.⁵¹ It is important that while fulfilling one's duties, one first has to rely on the regulations for the application of direct coercion as stated in the LEA. In situations which do not allow the application of direct coercion, but in which it is inevitable to protect the official's own life and health, the officials can rely on the penal law related regulation for self-defence.⁵² According to the principle of legal clarity, a legal provision should provide officials' with clear instructions and certainty they act adequately.⁵³ For example, assistant police officers have state guarantees if violence is used with regard to them in connection with the performance of their duty and they have been injured, what is more, it has been clearly stated that they can use a firearm or an electric shock weapon for self-defence.⁵⁴ While on duty, a prison service official may use self-

⁴⁹ Chancellor of Justice. 2014. To legalise the police official's self-defence regulation, and to analyse what was related to the State Liability Act. Teder 2014, pp. 1. [Online material] Available at: <https://www.oiguskantsler.ee/et/seisukohad/seisukoht/m%C3%A4rgukiri-politseiametnike-h%C3%A4dakaitse%C3%B5igus-ja-vahetu-sunni-rakendamise> [Accessed on 13.05.2020].

⁵⁰ Constitution of the Republic of Estonia § 13, 16; Teder 2014, pp. 4.

⁵¹ Teder 2014, pp. 8, 9.

⁵² Teder 2014, pp. 16.

⁵³ Teder 2014, pp. 3; commented version of the Constitution of the Republic of Estonia § 12, subsection 16.

⁵⁴ Assistant Police Officer Act 2019, § 35, 38.

defence equipment and physical force to ensure their own safety.⁵⁵ The current Environmental Supervision Act⁵⁶ and Local Government Organisation Act⁵⁷ do not have such regulations. In December 2019, the Ministry of the Interior initiated a draft legislation to amend the Rescue Act and the Weapons Act. As a result of this amendment the rescue officials with the occupational qualification of an EOD technician may carry a service weapon upon fulfilling their duties (e.g. while conducting the EOD activities, attending CBRNE threats and attacks and while dealing with explosives). However, they could only use it while performing self-defence⁵⁸. In a broad sense, the planned amendment is relevant, but then the only means of direct coercion EOD technicians may use are physical force, service animal and an explosive device for special purposes.⁵⁹ In the sense of public order protection, the work of EOD technicians is connected with the determining or countering serious threat⁶⁰, which means that while doing so they might face a situation in which they not only need to use a firearm to perform self-defence but need to do so to achieve a public order protection related aim.

CURRICULA NEED TO BE AMENDED WITH A SECTION ON DIRECT COERCION

The document analysis sample consists of curricula implemented at the Estonian Academy of Security Sciences⁶¹, in addition to that, existent occupational qualification standards⁶² are reviewed and compared with the police's direct coercion related training. It is aimed to give an overview to find out whether there is a sufficient amount of fundamental principles of the right of interference in the training, incl. the theoretical and practical part of the application of direct coercion, also recommendations for amending the documents are

⁵⁵ Imprisonment Act (2001), RT I, 06.05.2020, 1, § 71 subsection 2.

⁵⁶ Environmental Supervision Act (2001), RT I, 13.03.2019, 2.

⁵⁷ Local Government Organisation Act (1993), RT I, 29.06.2018, 1.

⁵⁸ Explanatory notes to the LEA 49, pp 9.

⁵⁹ A service animal is used... and an explosive device must not be used against people. *Rescue Act*, § 24¹-26.

⁶⁰ In the sense of § 5 subsection 4 of the LEA, serious threat mostly means threat to a person's life, physical freedom, physical inviolability, threat of terror, great proprietary or environmental threat.

⁶¹ Estonian Academy of Security Sciences, 2019. *Police Officer's curriculum*. [Online material] Available at: https://www.sisekaitse.ee/sites/default/files/inline-files/04.1_Politseiametniku%20%C3%B5ppekava%202018.pdf [Accessed on 12.05.2020]; Estonian Academy of Security Sciences, 2020. *EOD technician's curriculum*. Tallinn: Estonian Academy of Security Sciences Estonian Academy of Security Sciences, 2020; Estonian Academy of Security Sciences, 2019. *Supervisory official's training programme. Continuing education curriculum*. Tallinn: Estonian Academy of Security Sciences Estonian Academy of Security Sciences, 2019; Estonian Academy of Security Sciences, 2016. *Level 5 training for public order officials. Advanced training curriculum*. Tallinn: Estonian Academy of Security Sciences.

⁶² Estonian Qualifications Authority, 2018. Occupational qualification standards. Available at: <https://www.kutsekoda.ee/et/kutseregister/kutsestandardid/otsing> [Accessed on 11.05.2020].

given.

Occupational qualification standard is a document that describes the job and the combination of the skills, knowledge and attitudes (aka competence requirements)⁶³ needed to successfully perform the job. Occupational qualification standard is used to compile new curriculum, incl. when assessing the outcomes to be achieved. The Estonian Qualification Authority has developed occupational standards for city and rural municipality public order officials and for EOD technicians that meet the requirements of the European Union Qualification Framework (EQF)⁶⁴. There are no occupational standards developed for EI inspectors.

The curricula describe the achieved aims that are based on the competences described in the occupational standard. First a threshold level is determined (basic level), if a student manages to exceed this level, he/she has successfully completed the curriculum and achieved the described learning outcomes.⁶⁵ The volume of the module focusing on direct coercion and security tactics in the police official's curriculum implemented at the Estonian Academy of Security Sciences is 9 ECVET (234 academic hours), and the optional service dog module 8 academic hours. There is also training focusing on the legal basis of the application of direct coercion and the providing of first aid in the volume of app. 30 hours. Law enforcement experts suggest that depending on which means of direct coercion a public service official who is not a police officer should use, their training should include at least: legal bases for the application of direct coercion and the providing of first aid (24 hours), rules of security tactics (10 hours), the use of physical force, special means, a cut-and-thrust and a gas weapon (40 hours), the use of a fire arm (40 hours). The volume of the training would then be 124 hours, 114 of which would be practical.

According to the current acts of law, EI inspectors have a right to apply physical force, handcuffs and a service weapon while on duty. Learning outcomes of the curriculum for EI inspectors⁶⁶ and the description of the learning content support the using of physical force, handcuffs and a firearm, but there is nothing about using a service dog as a special means. The

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Pilli, E., 2009. *Väljundipõhine hindamine kõrgkoolis*, pp 9-18. [Online material] Available at: <http://dspace.ut.ee/bitstream/handle/10062/16496/hindamisraamat.pdf> [Used 12.05.2020].

⁶⁶ Estonian Academy of Security Sciences, 2019. *Supervisory official's training programme. Continuing education curriculum*. Tallinn: Estonian Academy of Security Sciences Estonian Academy of Security Sciences, 2019.

current volume of direct coercion related training in their curriculum is little and only allows to demonstrate the acquired skills and practice some techniques; however, no skills are neither formed nor consolidated in such a short time. In dangerous situations where the application of direct coercion might be necessary, EI inspectors have to make decisions that are based on reflex movements.⁶⁷ In order to consolidate reflex skills the so-called repetition method is used. The repetition method is based on repeating one and the same movement; therefore, to acquire a basic skill, the student has to repeat one and the same movement continuously to stay cool and polish the motor program of their muscles.⁶⁸ If the list of the means of direct coercion applicable by EI inspectors were made more versatile (see Figure 1), and the right to use the means to force a vehicle to stop, cut-and thrust weapon, baton or a telescopic baton and a gas or an electric shock weapon were added, then the training volume should definitely be increased, recommendations are brought in table 3.

From amongst the means of direct coercion brought in the LEA, EOD technicians may use physical force, a service animal and a firearm.⁶⁹ According to the RA they may also use an explosive device for special purposes which is not used against a person. EOD technicians brought out a need to use more means of direct coercion (see Figure 3). In 2020 the occupational qualification standards and curriculum for EOD technicians were amended. The curriculum features the following topics in a sufficient volume: legal bases for applying direct coercion, providing of first aid to a person injured in the course of applying direct coercion, ways of using a service animal. Particular attention is paid on service weapon related training (52 hours of practical training). The training should also include the use of physical force, a gas and a pneumatic weapon and handcuffs, see recommendations in table 3.

Since the LGC public order officials have no right to apply direct coercion, the respective competences must be added to the occupational standard and the curriculum must be amended with the respective outcomes. LGC public order officials should have a right to apply physical force and use such special means as handcuffs, a gas weapon and a cut-and-thrust weapon, see table 3.

⁶⁷ Birzer, M. L. 2003. Theory of Andragogy Applied to Police Training. Journal: *Policing: An International Journal of Police Strategies & Management* 26/1, pp. 29-42. Emerald Publishing.

⁶⁸ Kiveste, R. 2012. Politsei väljaõppe metoodika äkkrünnakute lahendamiseks, pp 17. Master's thesis. Estonian Academy of Security Sciences.

⁶⁹ *Rescue Act*, § 24¹ – Use of direct coercion. Online material] Available at: <https://www.riigiteataja.ee/en/eli/ee/520032019001/consolide/current#para24b1> [Used 13.05.2020].

Table 3. Amending of the direct coercion related training for public order officials who are not police officers (compiled by the author).

LGC public order official	Occupational qualification standard	Outcomes, topics and volume of the curriculum
CURRENT		
LGC public order official	The occupational qualification standard does not reflect the competence for the application of direct coercion.	<p>Outcomes:</p> <ul style="list-style-type: none"> - In the scope of their competence, conducts state supervision concerning the requirements for behaviour in a public space. - In the scope of their competence, applies the measures of state supervision and compiles documents. <p>Volume: 28 hours (theoretical training, does not include fundamentals for the application of direct coercion).</p>
EI inspector	No occupational qualification standard.	<p>Outcomes:</p> <ul style="list-style-type: none"> - Associates the principles of administrative proceedings and law enforcement law upon applying public order measures. - Upon applying public order measures, considers the requirements for legality. <p>Volume: 6 hours</p> <ul style="list-style-type: none"> - Knows the fundamentals of security tactics and the legal limits for the application of physical force. - Uses techniques for the application of physical force and basic kicking techniques. - Can use handcuffs and handle their service weapon. <p>Volume: 21 hours.</p>
RB EOD technician	The occupational qualification standard does not reflect the competence for the application of direct coercion.	<p>Outcomes:</p> <ul style="list-style-type: none"> - Knows the most important legal provisions and safety instructions of the fields of rescue and EOD and bordering fields, uses the legal provisions database upon solving a real-life situation. <p>Volume: 15.6 hours.</p> <ul style="list-style-type: none"> - BLS (Basic life support) – using a pocket mask performs basic resuscitation activities on a resuscitation dummy. <p>Volume: 23.4 hours.</p> <ul style="list-style-type: none"> - Knows the possibilities and functions of a dog upon responding to a bomb incident; - Explains the possibilities of using a dog to increase the safety of an EOD technician. <p>Volume: 7.8 hours.</p> <ul style="list-style-type: none"> - Explains the handling of service weapons according to valid regulations; - Uses a service weapon lawfully and safely, uses suitable tactics and fulfils the set shooting norms. <p>Volume: 78 hours, 52 of which involve practice.</p>
NEEDS AMENDING		
LGC public order official	Applies direct coercion purposefully and proportionally in order to enforce a state supervision measure.	<p>Outcome: A public order official applies direct coercion purposefully and proportionally in order to enforce a state supervision measure.</p> <p>Topics:</p> <ul style="list-style-type: none"> - Legal bases for the application of direct coercion, incl. rendering help to the injured. - Documenting. - Falling techniques, standing, distance and movement. - Detention techniques. - Breaking free of different holds. - Using of handcuffs and conducting security check. - Using of a cut-and-thrust and a gas weapon, different kicking techniques, blocking a cut-and-thrust weapon attack. <p>Volume of contact classes: Lecture-seminar – 4 academic hours Practical exercises – 32 academic hours Demonstration – 2 academic hours.</p> <p>Individual learning: Documenting of the application of direct coercion, self-check tests – 10 academic hours</p>
EI inspector	-	The aforementioned shall be added 40 academic hours of firearm training, and the training for the use of a service animal.
RB EOD technician	Applies direct coercion purposefully and proportionally in order to enforce a state supervision measure.	The curriculum shall be added the outcomes and topics related to the use of physical force, handcuffs, a gas weapon and a pneumatic weapon.

In order to guarantee the legal application of state supervision measures and direct

coercion, it is reasonable to state the requirements for becoming a public order official and the requirements for their training in the law. For example, there is a similar regulation in the Assistant Police Officer Act.⁷⁰

CONCLUSIONS

Recommendations made and examples given by the EI heads of bureaus illustrate the need to homogenise the EI's application of the means of direct coercion brought in different acts of law, and to have a more detailed regulation for the use of the means of direct coercion while performing self-defence. Experts suggest inspectors should additionally have a right to use the following means of direct coercion - handcuffs, a gas weapon, a cut-and-thrust weapon, means to force a vehicle to stop. The current regulations are contradictory and there are deficiencies, the discords encourage uncertainty and therefore it might happen a situation remains unsolved. The exhaustive list of means of direct coercion should be brought in the Environmental Supervision Act.

The current RA and the planned amendments do not include an exhaustive list of the public order related activities carried out by EOD technicians. If the legislator and stake holders do not wish to consider EOD technicians as public order officials of a competent law enforcement agency, then there is no basis to give them the right to apply measures and use direct coercion "on the bases and pursuant to the procedure provided by the Law Enforcement Act". In such a case, EOD technicians work as typical administrative authority who have a right to issue administrative acts and take administrative actions, e.g. to conduct EOD they have a right to enter an owner's dwelling without previously obtaining a permit from the administrative court, or take the substances, materials and devices necessary for EOD following the principles of the duty to grant use of a thing. According to the author, it is not a reasonable solution, especially in those possible situations in which the police cannot support the work of EOD technicians due to fulfilling their own duties. One possible solution would be to provide EOD technicians with police training that would include the knowledge and skills of an EOD expert and police officer. In such case the principle of legal clarity is guaranteed since there would be clear provisions regulating officials' intervention and people could be confident that their rights are encroached on by competent officials. The questionnaire held among practitioners indicated that there is a need to amend the list of allowed special measures, EOD commanders suggest it

⁷⁰ *Assistant Police Officer Act* § 8 – training of assistant police officer and candidate for assistant police officer. Online material] Available at: <https://www.riigiteataja.ee/en/eli/512052020001/consolide#para8> [Used 13.05.2020]

is important for them to carry out the examination of persons, security check, stop a vehicle and to take a movable into storage. From amongst the means of direct coercion, they said it would be necessary to add the right to use a gas weapon, binding means, handcuffs, a technical barrier, means to force a vehicle to stop and a pneumatic weapon (at the moment they are allowed to use physical force, a firearm and a service animal).

Currently city and rural municipality public order officials have no right to use direct coercion all. However, their supervision duties expect them to use physical force, handcuffs, a gas and a cut-and-thrust weapon the least. If we compare the duties of the LGC and the police to do with the checking of the compliance with the requirements stated in the Alcohol Act⁷¹ and those related to the behaviour in a public place⁷², it is evident the list of allowed measures should definitely be amended by adding the right to check and establish intoxication and the right to take people to recover from intoxication, but also the right to conduct security check and the right to examine a person.

The assignment of additional powers to apply measures and direct coercion is necessary since due to fulfilling their duties the police cannot always render assistance to other LEI, especially in a situation of crisis.

Self-defence regulation needs to be defined for all LEIs, it should be reflected in the primary laws of each area - Environmental Supervision Act, Rescue Act and Local Government Organisation Act.

The introduction of each additional measure, especially when it comes to the implementation of a specific means of direct coercion, has to bring about changes in the content and volume of training.

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⁷¹ *Liquid Fuel Act* (2003), RT I, 15.03.2019, 16, § 49-50.

⁷² LEA 2019, § 57¹-57².

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